

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)	
)	
Restoring Internet Freedom)	WC Docket No. 17-108
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**REPLY COMMENTS OF THE
EDISON ELECTRIC INSTITUTE**

Edison Electric Institute

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August 30, 2017

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In the Matter of)	
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**REPLY COMMENTS OF THE EDISON ELECTRIC INSTITUTE ON NOTICE
OF PROPOSED RULEMAKING**

Pursuant to sections 1.415 and 1.419 of the Federal Communications Commission’s (“FCC” or “Commission”) Rules, the Edison Electric Institute (“EEI”), on behalf of its member companies, hereby submits these Reply Comments to address questions and issues in the Commission’s Notice of Proposed Rulemaking (“NPRM”) adopted in the above-referenced proceeding on May, 2017.¹

EEI is the trade organization that represents all U.S. investor-owned electric companies and its members provide electricity for 220 million Americans, operate in all 50 states and the District of Columbia. As providers of electricity to much of America and as owners of a considerable amount of utility poles across the United States, EEI members have considerable expertise in matters concerning communication provider attachment to utility owned electric poles for broadband deployment and the interlocking regulatory schemes concerning FCC pole attachments to utility poles and federal and state regulation of electric utility rates and service, and EEI members have a strong interest in ensuring the Commission’s proposals for the “Open

¹ Notice of Proposed Rulemaking, *In the Matter of Restoring Internet Freedom*, WC Docket No. 17-108 (Adopted May 18, 2017).

Internet,” pole attachment reform, and broadband deployment properly consider the interests of EEI’s member customers.

In the NPRM, the Commission specifically requests comments “on the impact of reclassification on other Commission proceedings and proposals,” including “how [the Commission] should take into account” the effects of the Regulatory structure created by the *Title II Order*² and how reclassification may affect pole attachments.³

In the *Title II Order*, the Commission reclassified internet service providers (“ISPs”) from lightly regulated “information services” not subject to the Telecommunications Act of 1996⁴ (the “Act”) to more heavily regulated “telecommunications carriers and services,” which are “common carriers” subject to the public utility regulations under Title II of the Act.⁵ The Commission further opined that classification as “telecommunications carriers and services” placed ISPs within the ambit of Section 224 of the Act and the Commission’s associated rules.⁶ Section 224 governs the Commission’s regulations of pole attachments. In Particular, Section 224(f)(1) requires utilities, such as EEI’s members, to provide telecommunications carriers the right of “nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled” by a utility, subject to various exceptions.⁷

² Report and Order on Remand, Declaratory Ruling, and Order (“*Title II Order*”), *In the Matter of Protecting and Promoting the Open Internet*, WC Docket No. 14-28, 30 FCC Rcd 5601 (2015).

³ NPRM ¶ 69.

⁴ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁵ *Title II Order*; see 47 U.S.C. § 153(51) (defining “telecommunications carriers” and stating that “[a] telecommunications carrier shall be treated as a common carrier under this chapter”).

⁶ *Title II Order* ¶¶ 56, 413, 456, 478–85.

47 U.S.C. § 224.

⁷ 47 U.S.C. § 224(f)(1) & (2).

In the instant NPRM, the Commission proposes implementing a “light-touch regulatory framework” to reduce the amount of regulation ISPs are subject to. In effect, these proposals will reclassify ISPs as something other than “telecommunications carriers” regulated by Title II of the Act.⁸

Under the Act, however, entities are either “telecommunications carriers,” or they are not.⁹ If an entity is a telecommunications carrier, then it is subject to the full regulations of the Act, but also receives the full benefits, including non-discriminatory access to utility-owned poles.¹⁰ If the Commission implements the Open Internet proposals in the NPRM and, in effect, reclassifies ISPs as something other than a “telecommunications carrier” as defined by the Act, then ISPs will no longer enjoy the statutory right to nondiscriminatory access to utility-owned poles provided by Section 224 and the associated Commission rules. Additionally, the Commission will no longer be able to cite Section 224 as a jurisdictional basis for its pole-attachment actions, rules, or regulations affecting ISP pole-attachments. The effects of reclassification, however, include other significant benefits. For example, now unencumbered by the market-distorting mandates of Section 224, ISPs and pole-owners, such as EEI’s members, will be able to freely negotiate pole-attachment contracts that reflect individual market-rates and procedures, not Commission regulation.

WHEREFORE, EEI respectfully requests that the Commission consider these reply comments and ensure that any future Commission action ordered as a result of this proceeding is consistent with them.

⁸ See NPRM.

⁹ See, e.g., 47 U.S.C. § 153(51) & 224(a) (defining “telecommunications carrier”); see also, e.g., *Title II Order*.

¹⁰ 47 U.S.C. § 224.

Respectfully submitted,

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Dated: August 30, 2017